(23)

Office - Supreme Court, U. S.
FILED
MAR 17 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1944.

No. 1047

BLAISE PASQUA, MILDRED FERRIS and MARY LEE HENDRIX,

versus

UNITED STATES OF AMERICA.

PETITION OF BLAISE PASQUA, MILDRED FERRIS AND MARY LEE HENDRIX FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

G. WRAY GILL,
Attorney for Petitioners.

SUBJECT INDEX.

	PAGE
OPINION BELOW	2
JURISDICTION	2
SUMMARY STATEMENT OF MATTER INVOLVED	3
QUESTIONS PRESENTED	5
REASONS RELIED ON FOR ALLOWANCE OF WRIT	6
TRANSCRIPT ANNEXED	8
SUPPORTING BRIEF	8
PRAYER	8
BRIEF IN SUPPPORT OF PETITION FOR WRIT OF CERTIORARI	10

TABLE OF CASES.

United States vs. Francis X. Gomila and Anthony Chauppette, No. 11084, U. S. C. C. A. 7, 10, 11, 13
Lee F. Weiler vs. United States of America, #340, October 1944 14
Chambers v. Florida, 309 U. S. 227, 60 S. Ct. 472 14

AUTHORITIES CITED.

Section 398, Title 18 of Criminal Code, U. S. C. A. . . .2, 3, 6
Paragraph (a) of Section 240 of the Judicial Code 2

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. .....

BLAISE PASQUA, MILDRED FERRIS and MARY LEE HENDRIX,

versus

UNITED STATES OF AMERICA.

PETITION OF BLAISE PASQUA, MILDRED FERRIS AND MARY LEE HENDRIX FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioners, Blaise Pasqua, Mildred Ferris and Mary Lee Hendrix, citizens of the United States, domiciled in the State of Louisiana, respectfully bring this their application for a writ of certiorari, to review the final judgment of the United States Circuit Court of Appeals for the Fifth Circuit in this criminal case.

OPINION BELOW.

Petitioners were convicted on April 19, 1944 in the District Court of the United States for the Eastern District of Louisiana of violating Section 398 in Title 18, U. S. C. A., the white slave traffic act. They were found guilty as charged on both counts of the indictment and the defendant, Pasqua, was sentenced to serve ten years and the two female defendants, Mildred Ferris and Mary Lee Hendrix, were sentenced to serve eight years each. Petitioners thereupon took their appeal to the United States Circuit Court of Appeals for the Fifth Circuit, where judgment was rendered affirming the conviction of all three defendants on January 3, 1945 (see Opinion, Tr. 379). Petitioners within the delays allowed by law, and on January 20, 1945, filed their petition for rehearing (see Tr. 384) in the said United States Circuit Court of Appeals for the Fifth Circuit, which petition for rehearing was denied (see Tr. 395) on February 20, 1945; that on February 27, 1945 a stay of mandate was ordered by the United States Circuit Court of Appeals for a period of thirty days to enable petitioners to appeal to this Honorable Court for a writ of certiorari to review said final judgment of the United States Circuit Court of Appeals for the Fifth Circuit (see copy of mandate, Tr. 397).

JURISDICTION.

Jurisdiction of this Honorable Court is invoked under paragraph (a) of Section 240 of the Judicial Code as amended and set forth on page 30, etc. of the Revised

Rules of the Supreme Court of the United States, making it competent for this Court to review by certiorari any case, civil or criminal, in a Circuit Court of Appeals when the application is made within thirty days after entry of judgment (denial of rehearing) as required by the rules of this Honorable Court.

SUMMARY STATEMENT OF MATTER INVOLVED.

The defendants were charged in an indictment on two counts of violating Section 398, Title 18 of the Criminal Code with reference to white slave traffic or transportation, in that they did transport certain named persons on certain specified dates from the State of Georgia to the Town of Thibodaux, Louisiana, for the purpose of prostitution or debauchery and with the intent and purpose to induce, entice and compel the said persons to become prostitutes and to give themselves up to debauchery.

The defendants were convicted on both counts and the defendant Blaise Pasqua was sentenced to serve five years on each count, to run consecutively, making a total of ten years. The defendants, Mildred Ferris and Mary Lee Hendrix, were each sentenced to five years on Count 1 and three years on Count 2, said sentences to run consecutively, making a total of eight years as to each. The defendants did not take the witness stand, nor did they place any other witness on the stand in their behalf. The Government, having rested its case, the defendants filed a motion for directed verdict (see Tr. 8), which was overruled and a bill of exception reserved. The defendants

then rested their case and filed a supplemental motion for directed verdict (Tr. 10), which was likewise overruled.

Numerous bills of exception were reserved during the course of the trial objecting to the Government introducing evidence tending to show and prove that each and every one of the defendants did have a bad reputation for morality; that the establishment involved did likewise have a bad reputation; that the defendants or one of them had sought to coerce a prosecuting witness and solicit her to change her testimony; that, further, by innuendo, did suggest that each and every one of the prosecuting witnesses had been approached, by cross-examining them on statements made to a government investigator, without the statements ever having been sought to be introduced in evidence and without the investigator being placed on the stand, and without *HAVING EVER* laid the predicate or foundation for the positive impeaching of the Government witnesses; the continuous admission of damaging, illegal hear-say testimony and the illegal questioning of the prosecuting witnesses and comments on said testimony by His Honor the Trial Judge, all of this was over the continuous and repeated objection of counsel for the defendants. The general tenor of the illegal evidence, tended to show that each of the defendants had a bad moral reputation; that the prosecuting witnesses were lying and trying to help the defendants and that the questioning and comments by the Court lended devastating emphasis to the said illegal evidence, and as heretofore stated, all continuously objected to by the defendants.

QUESTIONS PRESENTED.

The case, from the viewpoint of petitioners, presents four primary questions, any of which should warrant the issuance of a writ to review the proceedings below:

1. The denial of due process of law and equal protection of the law to a citizen of a State and of the United States, by placing his or her alleged bad reputation before the Jury, without the defendant or any of them having taken the the witness stand.

2. The questions of the Court and the statements and comments by the Court tending to lend its sanction as to the propriety of the questions objected to and, in several instances, making statements tantamount to saying to the Jury that the bad reputation of the defendants had been proven on the very point at issue.

3. The illegal questioning of the Government witnesses on matters concerning statements made out of the presence of the defendants, without having plead surprise and without ever having acquired the right to cross-examine witnesses who were only trying to tell the truth on the witness stand and to elucidate upon statements theretofore made and to explain the facts upon which the Government agent had formed an opinion contrary to their sworn statement on the witness stand.

4. The admitting in evidence of a statement, over objection of counsel, tantamount to a confession, without the predicate having been laid in either the opening statement or in the introduction of the statement itself.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

The reasons relied on for the allowance of a writ of certiorari are:

1. That the constitutional and statutory rights of the petitioners have been infringed upon by a conviction of violating Section 398 in Title 18, U. S. C. A. wherein all the evidence showed that the defendants were placed on trial before a Jury and that at the incipiency of the trial, the Jury was told that the defendants had a bad moral reputation and that the establishment where they were working had a bad reputation and that the Court believed that the bad reputation had been proven.

2. That the Court did further charge the Jury that the defendants must in effect take the witness stand to testify in their behalf, by charging them that if a *prima facie* case (Tr. 338-39) is proven against the defendants and they fail to meet this *prima facie* proof by legal evidence, then that *prima facie* evidence would be sufficient to convict; thus, in effect, indirectly commenting on the failure of the defendants to take the witness stand.

3. That the Court did further charge the Jury on the question of the presumption of innocence and that the said charge was confusing, misleading and deprived your defendants of due process of law and equal protection of the law and was tantamount to saying that the presumption of innocence was *ONLY* intended to protect innocent people, leaving only one conclusion for the Jury to draw and that was that the defendants were guilty, that a

prima facie case had been proven, that the defendants had not taken the stand to refute it, and that their failure to do so accentuated the fact that they were guilty, in the light of the charge of the Court, and that they all had bad reputations.

4. That the charge of the Court in the case now presented to Your Honors on appeal for certiorari was more damaging, more devastating, more to the prejudice of the defendants and more depriving of their constitutional prerogatives than the charge in the case of *United States vs. Francis X. Gomila and Anthony Chauppette,* No. 11084 of the docket of the United States Circuit Court of Appeals for the Fifth Circuit, which conviction the Court reversed in its opinion delivered December 28, 1944, as set forth in your defendants' petition for rehearing (Tr. 391 top of page), as will be observed by comparing it with that part of the Court's charge herein complained of, set forth in the petition for rehearing (Tr. 391 bottom of page and Tr. 392).

5. That the questioning of the witnesses by the Court and the statements of the Court to the prejudice of the defendants was likewise much more damaging than was that complained of in the *Gomila* case above referred to, and the Court of Appeals was more pronounced in its condemnation in the instant case than in the *Gomila* case, and yet failed to reverse the judgment, as will be observed by a reading of the decision, because of the alleged proof of guilt of the defendants, which we again respectfully urge was the result of the illegal questioning of the witnesses, the illegal prejudicial answers given

thereto, and the questioning of the witnesses by the Court, all of which was timely objected to.

TRANSCRIPT ANNEXED.

The record having been printed for the use of the court below, and the necessary copies so printed being furnished, your petitioners have filed herewith the copies of said record as printed below, together with the proceedings and opinion in the Honorable Circuit Court of Appeals for the Fifth Circuit and due certificate thereon of the Clerk of said Court.

SUPPORTING BRIEF.

Petitioners also file herewith and make part of this application their brief in support thereof.

PRAYER.

Wherefore, petitioners, Blaise Pasqua, Mildred Ferris and Mary Lee Hendrix, respectfully pray that a writ of certiorari may issue to the Honorable the United States Circuit Court of Appeals for the Fifth Circuit, to the end that this cause may be reviewed and determined by this Court; and that the judgment of the said United States Circuit Court of Appeals for the Fifth Circuit may be in due course reversed and set aside, and that judgment may be rendered in favor of petitioners, setting aside their

conviction and sentence pronounced below, and discharging them forthwith; and petitioners pray for all further and necessary orders proper in the premises, and for all such relief as the nature of the case may justify.

G. WRAY GILL,
Attorney for Petitioners.